IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 304

JOHANN CARL PFLUEGER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, ROBERT H. JACKSON, Attorney General of the United States, as Alien Property Custodian, and W. A. JULIAN, Treasurer of the United States.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Your petitioner, Johann Carl Pflueger, respectfully prays that a Writ of Certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia entered on April 7, 1941.

Opinions Below.

The opinion of the District Court dismissing the complaint for lack of jurisdiction is not reported but may be found in the record (R. 240). The opinion of the Court of

Appeals filed April 7, 1941 affirming the District Court is set forth in the record (R. 248-254). A petition for rehearing duly filed was denied on April 28, 1941 (R. 255).

Jurisdiction.

The jurisdiction of this court is invoked under the provisions of Section 240(a) of the Judicial Code as amended (Title 28 U. S. C. 347).

Summary Statement of the Matter Involved.

Your petitioner brought this suit in the District Court of the United States for the District of Columbia, pursuant to the provisions of Section 9(a) of the Trading With The Enemy Act as amended (40 Stat. 419, 50 U. S. C. appendix) and the 5th Amendment to the Constitution of the United States, to recover just compensation for property seized by the Alien Property Custodian and disposed of by him at a price far less than its true value. The suit is for the difference between the actual value of the property and the amount realized for it by the Alien Property Custodian which latter sum had been returned to petitioner.

The District Court and the Court of Appeals for the District of Columbia held that there was no jurisdiction in the District Court to entertain such a suit because of Section 7(c) of the Trading With The Enemy Act which purports to limit recovery for seizures to the "net proceeds" of the seized property (R. 240; 253-4).

The essential facts are not controverted. Petitioner was born in the Hawaiian Islands in 1861 (R. 104). By virtue of his Hawaiian birth he became a citizen of the Repub-

lic of Hawaii, and upon annexation of the territory by the United States, an American citizen by operation of law. His American citizenship is not questioned by respondents.

For some time prior to the entry of the United States into the World War in 1917, petitioner was engaged in business in Bremen, Germany, as sole owner of the firm of J. C. Pflueger & Co. (R. 106). The business conducted was that of European representative of H. Hackfeld & Co. Ltd., (R. 106) which was probably the largest commercial enterprise in the territory of Hawaii.

Shortly after the entry of the United States into the War petitioner began his efforts to leave Germany. Upon learning that the Spanish diplomatic authorities had undertaken the representation of American citizens in Germany, he applied for an extension of his American passport which was granted by the Spanish authorities on June 15, 1917 (Pflueger Ex. 2, R. 197). He thereupon applied for a new passport to enable him to travel to the United States which was issued in Washington but did not reach Germany until May or June 1918 (R. 124). Upon being advised of its arrival he made application to the German authorities for permission to leave Germany (R. 124, 125). This was denied on June 1, 1918 (Pflueger Ex. 5, R. 201, 202). Thereafter, on June 21, 1918, the Spanish Embassy in Berlin issued to petitioner a certificate of identity as an American citizen permitting him to remain in Germany for the duration of the War (Pflueger Ex. 6, R. 203). On May 17, 1920 he obtained an emergency United States passport from the United States legation at The Hague (Pflueger Ex. 17, R. 217). Three days later he sailed from Holland for the United States (R. 125) where he has since resided continuously (R. 122).

During the last War, petitioner was registered with the German authorities as an American citizen (Pflueger Ex. 4, R. 201), and was required to report to the German police at frequent intervals to give an account of his activities (R. 109). At all times he was acknowledged by the State Department in Washington to be an American citizen (Pflueger Ex. 7, R. 204-5).

Petitioner owned five hundred shares of preferred and twelve hundred and forty-six shares of the common stock of H. Hackfeld & Co. Ltd. and sixteen hundred and twenty-nine shares of Pacific Guano & Fertilizer Co. Ltd. (R. 4), both Hawaiian corporations. On January 28, 1918 the then Alien Property Custodian, through his agent in Honolulu seized all of this property (R. 4).

The Custodian, through the seizure of petitioner's stock and that of certain other persons, obtained control of the Hackfeld Co. and caused it to transfer all of its assets to the American Factors Ltd., a corporation which he formed for the purpose (R. 5). The record shows that the amount paid for the entire assets of the Hackfeld Company was only about three times its earnings for 1917, the last full year it was in business (R. 174). Petitioner's stock in the Pacific Guano & Fertilizer Company, was sold by the Custodian at auction principally to American Factors Ltd. (R. 5). The company had had a long and successful history and in 1917 paid dividends of fifteen per cent. (R. 120-1).

The seizure and proposed sale of petitioner's property came to his attention while he was in Germany and he immediately protested through the Spanish Embassy and the State Department asserting his American citizenship (R. 214-5). The Custodian was advised of this by the State Department (R. 214-5) but in complete disregard of peti-

tioner's protests, proceeded with the arbitrary disposition of his property.

In November 1937, after unsuccessfully endeavoring to hold Germany and the individual purchasers of American Factors Ltd. stock liable for his loss and shortly after the decision of this court in *Becker Steel Co.* v. *Cummings,* 296 U. S. 74, petitioner brought this suit, relying upon this Court's reasoning and interpretation of the Trading With The Enemy Act in that case.

Questions Presented.

1. May the property of an American citizen be seized and disposed of by officers of the United States Government without granting to the citizen recourse to the courts to establish his claim for just compensation guaranteed him by the Fifth Amendment?

2. Does the provision of Section 7(c) of the Trading With The Enemy Act purporting to limit recovery to the net proceeds of seized property deprive the district courts of jurisdiction to hear the claim of a citizen for just compensation for property seized by the Alien Property Custodian and disposed of by his subordinates at a price fixed by him which is far below the true value?

3. Is there not a conflict of decision between the United States Court of Appeals for the District of Columbia in this case and the United States Court of Claims in *Escher* v. *United States,* 68 Ct. Cls. 473; cert. den. 281 U. S. 752, upon the question of the jurisdiction of the district courts under the Trading With The Enemy Act in a case like this?

Reasons Relied on for the Allowance of the Writ.

This case involves a question of great public importance which has not been determined by this Court. Congress may, at any time, authorize the taking of property for any use of the United States. It may authorize an administrative officer to effect the seizure and it may, as it did in the Trading With The Enemy Act, authorize such officer to dispose of the seized property. It may not, however, we submit, limit the citizen owner of the property to the amount realized for it by the officer and deny the citizen the right of access to the courts to assert his claim for just compensation for his property guaranteed him by the Fifth Amendment. The Court of Appeals in this case has in effect held that it may.

In *Becker Steel Co.* v. *Cummings,* 296 U. S. 74, this court had occasion to consider the effect of section 7(c) of the Trading With The Enemy Act. There, an American corporation which had received the net proceeds of the sale of its property brought suit to recover certain expenses of the sale which had been deducted by the Alien Property Custodian. This court held that such an action would lie notwithstanding section 7(c) of the act limiting recovery to the "net proceeds" held by the Alien Property Custodian. In reaching its conclusion this court recognized the fundamental principle involved here in the following language (p. 79):

> "The implication that by the appropriation of private property to public use the United States undertakes to make just compensation for it, see *United States* v. *Lynah,* 188 U. S. 445, 471; *Jacobs* v.

> *United States,* 290 U. S. 13; *Perry* v. *United States,* 294 U. S. 330; *Brooks-Scanlon Corp.* v. *United States,* 265 U. S. 106, must likewise enter into the construction of a statute giving to a non-enemy a remedy for the seizure of his property as a war measure. Only compelling language in the congressional enactment will be construed as withdrawing or curtailing the privilege of suit against the government granted in recognition of an obligation imposed by the Constitution. See *Lynch* v. *United States,* 292 U. S. 571, 586, 587; *Russian Volunteer Fleet* v. *United States,* 282 U. S. 481, 489. Hence Sec. 9(a) must be broadly construed to give effect to its remedial purpose, see *Miller* v. *Robertson,* 266 U. S. 243, 248; *Behn, M. & Co.* v. *Miller,* 266 U. S. 457, 471, 472."

This court, however, did not pass on the specific issue involved here but left it open for future determination in a case presenting the question, saying at page 80:

> "In the present state of the record it is unnecessary to inquire whether the effect of the act is to sanction in every case the sale of the property of a non-enemy giving him recourse only to the proceeds of sale. See *Sielcken-Schwarz* v. *American Factors* (C. C. A., 2nd) 60 F. (2d) 43, 44. That question was not raised or considered below."

The case at bar squarely presents the question left open in the *Becker Steel Company* case. So far as we know it is the first case in which this problem has reached this court on petition for certiorari or otherwise.

This court has been extremely careful in all cases brought to its attention to preserve the right of a citizen to obtain just compensation through the courts, *Jacobs* v. *United States,* 290 U. S. 13, 16; *Monongahela Navigation*

Co. v. *United States,* 148 U. S. 312, 336; *United States* v. *Cohen Grocery Co.,* 255 U. S. 81, 88. The Court of Appeals disregarded these cases and the reasoning of this court in the *Becker Steel Company* case and adopted a new theory in holding that the provisions in section 7(c) (added by an amendment to the Act adopted on November 4, 1918) effectively oust the district court of the jurisdiction provided by Section 9 of the original Act (R. 253).

The decision of the Court of Appeals is in direct conflict with the decision of the Court of Claims in *Escher* v. *United States,* 68 Ct. Cls. 473, cert. den., 281 U. S. 752. That case involved the seizure of certain railway stock by the Alien Property Custodian which was sold to the director general of railroads. Subsequently, the director general sold the stock at a profit of upwards of a million dollars. The owner of the stock who had received the proceeds of the sale by the custodian to the director general brought suit in the Court of Claims to recover this profit. The Court of Claims held that by reason of the provisions of Section 9(a) of the Trading With The Enemy Act, exclusive jurisdiction to hear all cases arising under the Trading With the Enemy Act was vested in the district courts and that in consequence it was without the jurisdiction.

The decision of the Court of Claims in the *Escher* case and of the Court of Appeals for the District of Columbia in this case are in direct conflict on this question of jurisdiction. Unless this conflict is determined, a citizen in the position of petitioner is left entirely without remedy. There is no court to which he can turn to obtain just compensation for the sale or disposition of his property but he must be satisfied with the proceeds received by the custodian irrespective of the adequacy of such proceeds.

Conclusion.

Your petitioner respectfully prays that a Writ of Certiorari be issued to the United States Court of Appeals for the District of Columbia and that this cause be reviewed and determined by this Court, that the judgment of the United States Court of Appeals for the District of Columbia be reversed and that petitioner be granted such other and further relief as to the Court may seem meet and proper.

Respectfully submitted,

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